IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

SUMMONS FOR JUDGEMENT NO.903 OF 2003
IN
SUMMARY SUIT NO.2098 OF 2003

Tahir Ahmed Khan ... Plaintiff

versus

The Vijaya Bank ... Defendant

Mr.Arun Sood for plaintiff.

Ms.Rekha Tawade i/by M.V.Kini & Co. for defendant

CORAM : S.C.DHARMADHIKARI, J.

DATE : 3rd August 2005

PC :

1. Heard Mr.Sood appearing for plaintiff and Ms.Tawde appearing for defendants. Perused the plaint and annexures thereto as well as affidavits placed on record.

2. In the light of clear stand of the defendant bank that the plaintiff has not cared to approach them when amounts were withdrawn, for a considerable length of time nor has he forwarded pass-book for necessary entries, it will not be possible to pass any orders in summary

jurisdiction. Although, reliance is placed by Mr.Sood on a judgement reported in AIR-1996-Bom-386, in my view, the said judgement was rendered in the peculiar facts of the case. There the short term deposits were placed with a nationalised bank and cheques were issued by the plaintiff therein which although encashed the proceeds were not handed over and therefore this Court held that objection to the maintainability of the summary suit would not be tenable. In view of undisputed facts placed before this Court, that it was observed that the suit is maintainable. Further, this Court also observed that the defence of nationalised bank in that case was sham and bogus. Here, the distinguishing feature is that the plaintiff has himself complained about theft of Bank documents from his house. A complaint has been lodged by him with the Police Station and an offence has been registered. The bank has denied any role in the fraud perpetrated on the plaintiff. On the other hand, it is categorically stated on affidavit that when no complaint is lodged with the bank of loss of cheque book by the plaintiff and the bank accuses the plaintiff of negligence, then it cannot be called upon to pay the amounts in summary jurisdiction. As to whether the bank

is guilty by acting in collusion with some third parties or that it is involved in the fraud, is something which cannot be decided in summary jurisdiction. The Hon'ble Supreme Court in the case reported in AIR-1998-SC-2317 and AIR-2002-SC-1993 has observed that when such is the nature of defence and fraud is alleged, then summary jurisdiction is not the remedy. Unconditional leave to defend is granted as triable issues arise pertaining to liability of the bank.

3. Mr.Sood invites my attention to the order passed by brother Vazifdar, J. directing the defendants to produce the records in respect of plaintiff's account and in particular cheques which have been forged and encashed. The bank was also directed to produce specimen signatures of the plaintiff.

4. Ms.Tawde appearing for defendants states that original documents have been handed over to investigating authorities. In my view, the investigating authorities as well as defendants could be directed to furnish to the plaintiff photocopies of the original documents which are referred to in the order dated 8th June 2005.

Necessary charges would be borne by the plaintiff. The defendant is directed to submit to the investigating authorities list of documents including cheques during the relevant period, extract of pass-book and specimen signatures of the plaintiff. On such list accompanying a written request, the investigating authorities shall hand over certified true photocopies of the originals to the parties. Needless to state that copy of application to be made by the defendant to the investigating authorities would be forwarded to the plaintiff. The investigating authorities are directed to do the needful within a period of eight weeks from the date of receipt of application by the defendant. This order shall not preclude the plaintiff from taking out appropriate proceedings in the suit for scuring the claims. All contentions of both sides in that behalf are kept open. Suit transferred to the list of commercial causes with usual directions to file written statement, inspection and discovery.

(S.C.DHARMADHIKARI, J.)